CIVIL LIBERTIES UNDER THE CONSTITUTION
POLITICAL SCIENCE 411

Spring 2024

Room 112, Murphey Hall ***Tuesday & Thursday, 2:00 - 3:15pm***

Dr. McGuire *353 Hamilton Hall*
kmcguire@unc.edu *Office hours: Tuesday & Thursday, 11:00am – 12:30pm*

For the better part of the twentieth century, questions of civil liberties and civil rights were the primary preoccupation of the U.S. Supreme Court. Indeed, weighing the principle of majority rule against the rights of political minorities continues to command a good deal of the justices' time. Given the sheer volume of such cases resolved by the Court, a great many of these issues would appear to be well settled. Moreover, the justices have, in recent years, begun to direct much of their attention to other substantive areas of the law. On closer examination, however, one discovers that most of the issues of liberties and rights continue to linger; as both society and the Court have changed, fresh constitutional imponderables have blossomed, while old issues have been litigated anew. Issues that many consider resolved reappear in various guises, testing the utility of longstanding principles. At the same time, changes in social custom, differences in moral views, and growth in science and technologies all serve to ensure that there are new conflicts over the liberties and rights of Americans. What is it that makes such issues so consistently difficult? How has the Supreme Court come to grips with them?

The answer lies in part in the dilemma, inherent in a modern democratic society, of sustaining the power of governmental decision makers to reflect the popular will on the one hand, while limiting that power when it restricts the prerogatives of the individual, on the other. After all, majorities have the legitimate right to see their preferences enacted into public policy. At the same time, however, the principle of majority rule does not of necessity grant the right of the many to treat the few in arbitrary and capricious ways. Thus, the justices must set about the business of weighing the interests of democratic decision making against individuality in one form or another. Fortunately, the Bill of Rights provides a good deal of promise by delineating, in a great many respects, where this line is to be drawn.

Interestingly enough, a Bill of Rights was not included by the Framers of the Constitution. For a variety of reasons, members of the Constitutional Convention were reluctant to place explicit limits on the powers of the new national government. Indeed, it was only because ratification of the Constitution itself hinged on the promise of a Bill of Rights that the nation's new charter was modified. Thus, the addition of the Bill of Rights was more a reflection of political compromise than a desire "to secure the blessings of liberty." For its part, the Supreme Court has defined the meaning of its provisions, but it has only been in the relatively recent past that the justices have undertaken to interpret them. Compared to other areas of constitutional law, the doctrines in the areas of civil liberties and civil rights are quite new, flowering fully only over the last fifty years. To be sure, the Court has provided considerable illumination on a wide array of questions that balance

individual rights and governmental power. Despite this guidance, however, the constitutional provisions that constitute America's civil liberties and rights still remain frustratingly ambiguous and, consequently, far from self-executing. Thus, irrespective of where the justices seek to strike that balance, challenging questions continue to confront the Court. You will see this played out in a number of respects throughout this term: Under what circumstances, if any, is government justified in regulating, punishing, or even preventing speech? Ought newspapers to be permitted to print virtually anything they wish, regardless of the consequences for individuals, government, or society as a whole? When, if ever, can the state legitimately punish the publication of an idea? How much latitude should individuals have in exercising their religious beliefs? Can the state involve itself in making judgments about what are and are not legitimate religions? To what extent can government involve itself in religious activities? Is the state ever justified in legislating on matters of highly personal choice? How far should the state be able to pursue the goal of eliminating and punishing criminal activity? What obligations does the state have to ensure that some citizens are not treated arbitrarily on account of characteristics that they possess, and what role should the state play in correcting inequities that may exist as a consequence of such treatment? These are, of course, perennial issues of American political discourse. They are also precisely the types of issues that the Supreme Court has attempted to resolve. In some instances, the Court's decisions have reconciled debates; in other instances, they have sparked new ones. In this class, it will be your task to confront and think with care about many of them.

Accordingly, the primary aim of this course is to acquaint you with the substantive meaning of the various protections of rights and liberties contained in the Constitution. You will be asked to consider not only the contemporary meaning of the Bill of Rights but also some of the historical evolution of the doctrines that have produced its present understanding. You will examine the purpose the Bill of Rights was intended to serve, how and to what extent its protections have been guaranteed over time, and in general how the Court's changing views of the meaning of Bill of Rights have affected the state of personal rights and liberties in the United States.

A note on subject matter. Questions of minority rights in a system of majority rule imply conflict between the personal freedom of individuals and the collective goals of an ordered society. Cases of civil liberties and civil rights, therefore, frequently involve actions that are controversial, unconventional, abhorrent, or offensive. Please be aware that the class will candidly consider the specifics of these actions in the various case contexts in which they arise.

Course requirements:

Books. For most, effective performance in this class will require a substantial investment of time and effort. You should consider carefully whether you wish to make such a commitment. After all, consuming and making sense of a great many Supreme Court opinions can be tedious work, a task complicated by the sometimes competing --- and very plausible --- views of the justices. You will find this required text to be particularly useful in developing your understanding of these various views:

Lee Epstein, Kevin T. McGuire, and Thomas G. Walker. 2021. *Constitutional Law for a Changing America: Rights, Liberties, and Justice*. 11th ed. Thousand Oaks, CA: CQ Press.

Grades. Your grade will be a function of your performance on three essay examinations and a series of low-stakes written assignments. Each exam will be worth 28% of your grade. Materials that are covered in class will serve as the principal basis for the examinations, but each exam will also contain some questions from the readings, as well. The written assignments involve participation in an online discussion forum. You will be asked to question and comment upon information related to the lecture and to offer feedback on the written ideas of other members of the class. Topics for discussion will be posted on a regular basis and open for your participation until new topics are posted. You will need to contribute to at least ten separate topics to satisfy the course requirements. Taken together, the various written assignments will constitute the remaining 16% of your grade.

OVERVIEW OF THE COURSE:

1. *Historical Origins of the Bill of Rights*
(January 11 – 16)

For all of their careful attention to the structure of the federal government --- its powers, prerogatives, and complex relationships between the branches --- the Founding Fathers provided no explicit protections within the Constitution of the kinds of rights and liberties that Americans today generally regard as indispensable. Why did the original Constitution make no mention of the right to free speech or the right to exercise religious freedom? Why did the Framers not seek to guarantee that, under a newly strengthened national government, there would be no limits on the arbitrary use of that power? How did such rights and liberties become a part of the Constitution?

Required reading:
Epstein, McGuire, and Walker, pp. 3-10, 67-87

Suggested reading:
Henry Abraham and Barbara Perry. 1998. *Freedom and the Court: Civil Liberties and Civil Rights in the United States.* 7th ed. New York: Oxford University Press.
Akhil Reed Amar. 2000. *The Bill of Rights: Creation and Reconstructio*n. New Haven: Yale University Press.
Neil H. Cogan. 2015. *The Complete Bill of Rights: The Drafts, Debates, Sources, and Origins*, 2nd ed. New York: Oxford University Press.
Leonard Levy. 1999. *Origins of the Bill of Rights.* New Haven: Yale University Press.
Gerard Magliocca. 2018. *The Heart of the Constitution: How the Bill of Rights Became the Bill of Rights.* New York: Oxford University Press.
William Davenport Mercer. 2017. *Diminishing the Bill of Rights: Barron v. Baltimore and the Foundations of American Liberty.* Norman, OK: University of Oklahoma Press.
Geoffrey R. Stone, Richard A. Epstein, and Cass R. Sunstein. 1992. *The Bill of Rights in the Modern State.* Chicago: University of Chicago Press.

"A bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference."."

--- Thomas Jefferson
Letter to James Madison, December 1787

"The argument we admit is not always the most conclusive which is drawn from the consequences urged against the adoption of a particular construction of an instrument. But when, as in the case before us, these consequences are so serious, so far-reaching and pervading, so great a departure from the structure and spirit of our institutions; when the effect is to fetter and degrade the State governments by subjecting them to the control of Congress, in the exercise of powers heretofore universally conceded to them of the most ordinary and fundamental character; when in fact it radically changes the whole theory of the relations of the State and Federal governments to each other and of both these governments to the people; the argument has a force that is irresistible, in the absence of language which expresses such a purpose too clearly to admit of doubt."

--- Justice Samuel F. Miller
The Slaughterhouse Cases (1873)

"The Commonwealth of Massachusetts is free to regulate the procedure of its courts in accordance with its own conception of policy and fairness unless in doing so it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental."

--- Justice Benjamin N. Cardozo
Snyder v. Massachusetts (1934)

"The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no election."

--- Justice Robert H. Jackson
West Virginia State Board of Education v. Barnette (1943)

"My study of the historical events that culminated in the Fourteenth Amendment, and the expressions of those who sponsored and favored, as well as those who opposed, its submission and passage persuades me that one of the chief objects that the provisions of the Amendment's first section, separately and as a whole, were intended to accomplish was to make the Bill of Rights, applicable to the states."

--- Justice Hugo Black
Adamson v. California (1947)

2. ***Free Exercise of Religion***

(January 18 – 25)

Pluralist society that it is, America has an enormous variety of religious faiths, all equally entitled to constitutional protection. But are they? In some instances, the legitimate exercise of a religious belief conflicts with governmental objectives. How does one balance the need to ensure religious liberty against the state's interest in promoting the public good? Are there some religious practices that the state may legitimately infringe upon? If so, by what rationale?

Required reading:
Epstein, McGuire, and Walker, pp. 91-126

Suggested reading:
Jesse H. Choper. 1995. *Securing Religious Liberty: Principles for Judicial Interpretation of the Religion Clause*s. Chicago: University of Chicago Press.
Bette Evans. 1997. *Interpreting the Free Exercise of Religion.* Chapel Hill: University of North Carolina Press.
Kent Greenawalt. 2009. *Religion and the Constitution, Volume 1: Free Exercise and Fairness*. Princeton, NJ: Princeton University Press.
Carolyn N. Long. 2020. *Religious Freedom and Indian Rights: The Case of Oregon v. Smith* Lawrence: University Press of Kansas.
Shawn Francis Peters. 2000. *Judging Jehovah's Witnesses: Religious Persecution and the Dawn of the Rights Revolution.* Lawrence: University Press of Kansas.
David M. O'Brien. 2004. *Animal Sacrifice and Religious Freedom: Church of the Lukumi Babalu Aye v. City of Hialeah*. Lawrence: University Press of Kansas.
Jack N. Rakove. 2020. *Beyond Belief, Beyond Conscience: The Radical Significance of the Free Exercise of Religion.* New York: Oxford University Press.
Frank J. Sorauf. 1976. *The Wall of Separatio*n. Princeton: Princeton University Press.

"The liberty enjoyed by the People of these States, of worshipping Almighty God agreeable to their Consciences, is not only among the choicest of their *Blessings*, but also of their *Rights*."

--- George Washington
Letter to the Society of Quakers, October 1789

"Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties."

--- Thomas Jefferson
in *Works of Thomas Jefferson* (1802)

Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law….[T]he Amendment embraces two concepts --- freedom to believe and freedom to act. The first is absolute, but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society….In every case, the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom."

--- Justice Owen Roberts
Cantwell v. Connecticut (1940)

"Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law....The religious views espoused [in this case] might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain."

--- Justice William O. Douglas
United States v. Ballard (1944)

3. *Freedom from Religion*
(January 30 – February 6)

The is no "official religion" in the United States; the government makes no judgment as to a common faith to which its citizens should subscribe, nor does the state seek to make decisions that reflect the tenets of a particular faith. Still, religion has always played an important role in American culture, and there is little doubt that it influences the decisions of policy makers in various ways. Can government take actions which, in effect, promote the views of a religion? If a law seems to benefit a specific faith, does that necessarily mean that such a law is invalid? What of the cause of religion in general? May the state take actions that advance all religions?

Required reading:
Epstein, McGuire, and Walker, pp. 126-179

Suggested reading:
Stephen Feldman. 1997. *Please Don't Wish Me a Merry Christmas: A Critical History of the Separation of Church and Stat*e. New York: New York University Press.
Howard Gillman and Erwin Chemerinsky. 2020. *The Religion Clauses: The Case for Separating Church and State*. New York: Oxford University Press.
Kent Greenawalt. 2009. *Religion and the Constitution, Volume 2: Establishment and Fairness*. Princeton, NJ: Princeton University Press.
Edward Larson. 1997. *Summer of the Gods: The Scopes Trial and America's Continuing Debate over Science and Religio*n. New York: Basic Books.
Leonard Levy. 1986. *The Establishment Clause: Religion and the First Amendmen*t. New York: Macmillan.
Stephen D. Solomon. 2007. *Ellery's Protest: How One Young Man Defied Tradition and Sparked the Battle over School Prayer*. Ann Arbor: University of Michigan Press.
Wayne Swanson. 1988. *The Christ Child Goes to Cour*t. Philadelphia: Temple University Press.

"Every new & successful example therefore of a perfect separation between ecclesiastical and civil matters, is of importance. And I have no doubt that every new example, will

succeed, as every past one has done, in shewing that religion & Govt. will both exist in greater purity, the less they are mixed together."

--- James Madison
Letter to Edward Livingston, July 1822

"The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa."

--- Justice Hugo Black
Everson v. Board of Education (1947)

"We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma. When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe. Government may not finance religious groups nor undertake religious instruction nor blend secular and sectarian education nor use secular institutions to force one or some religion on any person. But we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence. The government must be neutral when it comes to competition between sects. It may not thrust any sect on any person. It may not make a religious observance compulsory. It may not coerce anyone to attend church, to observe a religious holiday, or to take religious instruction. But it can close its doors or suspend its operations as to those who want to repair to their religious sanctuary for worship or instruction. No more than that is undertaken here."

--- Justice William O. Douglas
Zorach v. Clauson (1952)

First Examination
February 8

4. ***Freedom of Speech***

(February 15 – 22)

In a democratic society, individuals should be able to express their views, both to fellow citizens and to representatives in government. The expression of political views, however, can sometimes be controversial, unsettling, offensive, disruptive, or even dangerous. Should the First Amendment protect all of these views, or is society ever justified in silencing its members? And when individuals organize for political purposes --- to express collectively their opinions --- is it necessary to think of free speech in any different terms?

Required reading:
Epstein, McGuire, and Walker, pp. 181-261

Suggested reading:

Robert Justin Goldstein. 2000. *Flag Burning and Free Speech: The Case of Texas v. Johnso*n. Lawrence: University Press of Kansas.

Anthony Lewis. 2008. *Freedom for the Thought We Hate: A Biography of the First Amendment*. New York: Basic Books.

David M. Rabban. 1999. *Free Speech in Its Forgotten Years, 1870-192*0. Cambridge: Cambridge University Press.

Steven H. Shiffrin. 2016. *What's Wrong with the First Amendment*. Cambridge: Cambridge University Press.

Geoffrey R. Stone. 2005. *Perilous Times: Free Speech in Wartime, From the Sedition Act of 1798 to the War on Terrorism*. New York: W.W. Norton.

Philippa Strum. 1999. *When the Nazis Came to Skokie: Freedom for Speech We Hat*e. Lawrence: University Press of Kansas.

Keith E. Whittington. 2018. *Speak Freely: Why Universities Must Defend Free Speech*. Princeton: Princeton University Press.

"The peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it..."

--- John Stuart Mill
On Liberty (1859)

"...if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought--not free thought for those who agree with us but freedom for the thought we hate."

--- Justice Oliver Wendell Holmes
United States v. Schwimmer (1929)

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."

--- Justice Robert H. Jackson,
West Virginia State Board of Education v. Barnette (1943)

"It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as the forms of governmental action in the cases above were thought likely to produce upon the particular constitutional rights there involved. This Court has recognized the vital relationship between freedom to associate and privacy in one's associations....Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs."

--- Justice John M. Harlan
NAACP v. Alabama (1958)

"We cannot accept the view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea."

--- Chief Justice Earl Warren
U.S. v. O'Brien (1968)

"Texas argues that its interest in preserving the flag as a symbol of nationhood and national unity survives this close analysis. Quoting extensively from the writings of this Court chronicling the flag's historic and symbolic role in our society, the State emphasizes the 'special place' reserved for the flag in our Nation. The State's argument is not that it has an interest simply in maintaining the flag as a symbol of something, no matter what it symbolizes; indeed, if that were the State's position, it would be difficult to see how that interest is endangered by highly symbolic conduct such as Johnson's. Rather, the State's claim is that it has an interest in preserving the flag as a symbol of nationhood and national unity, a symbol with a determinate range of meanings. According to Texas, if one physically treats the flag in a way that would tend to cast doubt on either the idea that nationhood and national unity are the flag's referents or that national unity actually exists, the message conveyed thereby is a harmful one and therefore may be prohibited. If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."

--- Justice William J. Brennan
Texas v. Johnson (1989)

5. ***Freedom of the Press***

(February 27 – March 5)

Not surprisingly, Americans place a high value upon the free press; indeed, the printed word is essential in transmitting ideas and information. The trouble is that not all of the press is printed, and not all of it involves words. Does this affect the meaning of the First Amendment? Does the Supreme Court place a high value upon allowing the widest possible latitude in broadcasting information, or is the press entitled to less protection --- or even no protection --- if that information is arguably harmful or worthless?

Required reading:
Epstein, McGuire, and Walker, pp. 263-327

Suggested reading:

Garrett Epps. 2008. *Freedom of the Press: Its Constitutional History and Contemporary Debate*. Amherst, NY: Prometheus Books.

Peter Charles Hoffer. 2011. *The Free Press Crisis of 1800: Thomas Cooper's Trial for Seditious Libel*. Lawrence, KS: University Press of Kansas.

James Kirby. 1986. *Fumble: Bear Bryant, Wally Butts and the Great College Football Scanda*l. San Diego: Harcourt Brace Jovanovhich.

Anthony Lewis. 1991. *Make No Law: The Sullivan Case and the First Amendmen*t. New York: Vintage Books.

Lucas A. Powe, Jr. 1992. *The Fourth Estate and the Constitution: Freedom of the Press in America*. Berkeley: University of California Press.

David Rudenstine. 1998. *The Day the Presses Stopped: A History of the Pentagon Papers Case.* Berkeley: University of California Press.

Rodney A. Smolla. 1988. *Jerry Falwell v. Larry Flyn*t. New York: St. Martin's Press.

"The liberty of the press is indeed essential to the nature of a free state: but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public: to forbid this, is to destroy the freedom of the press: but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity."

--- William Blackstone
Commentaries on the Laws of England (1765)

"The last right we shall mention, regards the freedom of the press. The importance of this consists, besides the advancement of truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of Government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated, into more honourable and just modes of conducting affairs."

--- Journals of the Continental Congress (1774)

"Without a free press there can be no free society. Freedom of the press, however, is not an end, in itself, but a means to the end of a free society. The scope and nature of the constitutional protection . . . must be viewed in that light, and in that light applied."

--- Justice Felix Frankfurter
Pennekamp v. Florida (1946)

"[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights. A criminal penalty or a judgment in a defamation case is subject to the whole panoply of protections afforded by deferring the impact of the judgment until all avenues of appellate review have been exhausted. Only after judgment has become final, correct or otherwise, does the law's sanction become fully operative. A prior restraint, by contrast and by definition, has an immediate and irreversible sanction. If it can be said that a threat of criminal or civil sanctions after publication 'chills' speech, prior

restraint 'freezes' it at least for the time. The damage can be particularly great when the prior restraint falls upon the communication of news and commentary on current events."

--- Chief Justice Warren E. Burger
Nebraska Press Association v. Stuart (1976)

6. *The Right to Keep and Bear Arms*
(March 7)

The question of whether the Constitution protects an individual's right to gun ownership is one that has long stirred public debate in the United States. It has not, however, stirred the Supreme Court to much consider the question --- that is, until quite recently. In the past few years, the justices have revived the Second Amendment, a provision of the Bill of Rights that most judges and a good many legal observers regarded largely as an anachronism. The justices have now determined that the right to possess firearms is not a throwback to bygone age but is instead a fundamental right, one that limits restrictions by both the national and state governments. What rationale underlies the Court's new interpretation of the Second Amendment?

Required reading:
Epstein, McGuire, and Walker, pp. 329-339

Suggested reading:
Saul Cornell. 2006. *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America*. New York: Oxford University Press.
Joyce Lee Malcolm. 1994. *To Keep and Bear Arms: The Origins of an Anglo-American Right*. Cambridge, MA: Harvard University Press.
H. Richard Uviller and William G. Merkel. 2002. *The Militia and the Right to Bear Arms, or, How the Second Amendment Fell Silent*. Durham, NC: Duke University Press.
Michael Waldman. 2015. *The Second Amendment: A Biography*. New York: Simon & Schuster.
David C. Williams. 2003. *The Mythic Meanings of the Second Amendment: Taming Political Violence in a Constitutional Republic*. New Haven, CT: Yale University Press.

"In the absence of any evidence tending to show that possession or use of a 'shotgun having a barrel of less than eighteen inches in length' at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense. "The Constitution as originally adopted granted to the Congress power --- 'To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions; To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.' With obvious purpose to assure the continuation and render possible the effectiveness of such forces the declaration and guarantee of the Second

Amendment were made. It must be interpreted and applied with that end in view."

--- Justice James McReynolds
U.S. v. Miller (1939)

"Does the preface fit with an operative clause that creates an individual right to keep and bear arms? It fits perfectly, once one knows the history that the founding generation knew. That history showed that the way tyrants had eliminated militia consisting of all the able-bodied men was not by banning the militia but simply by taking away the people's arms, enabling a select militia or standing army to suppress political opponents. This is what had occurred in England that prompted codification of the right to have arms in the English Bill of Rights.

"It is therefore entirely sensible that the Second Amendment's prefatory clause announces the purpose for which the right was codified: to prevent elimination of the militia. The prefatory clause does not suggest that preserving the militia was the only reason Americans valued the ancient right; most undoubtedly thought it even more important for self-defense and hunting. But the threat that the new Federal Government would destroy the citizens' militia by taking away their arms was the reason that right --- unlike some other English rights --- was codified in a written Constitution."

--- Justice Antonin Scalia
District of Columbia v. Heller (2008)

7. ***Personal Autonomy, Privacy, and the Due Process Clause***
(March 19 – 21)

Those who drafted the Bill of Rights contemplated that Americans would enjoy a certain degree of privacy within their homes, an autonomy unhampered by arbitrary violations by the state. Today, issues of personal autonomy in the Supreme Court take on a different sort of meaning: To what extent does the Constitution protect the rights of individuals to make the most deeply personal decisions about how to live their lives? Does it matter that the Constitution makes no explicit statement on such issues?

Required reading:
Epstein, McGuire, and Walker, pp. 341-396

Suggested reading:
Howard Ball. 2004. *The Supreme Court in the Intimate Lives of Americans: Birth, Sex, Marriage, Childrearing, and Death*. New York: New York University Press.
Dale Carpenter. 2013. *Flagrant Conduct: The Story of Lawrence v. Texas*. New York: W.W. Norton.
Daniel A. Farber. 2007. *Retained by the People: The "Silent" Ninth Amendment and the Constitutional Rights Americans Don't Know They Have*. New York: Basic Books.
N.E.H. Hull and Peter Charles Hoffer. 2010. *Roe v. Wade: The Abortion Rights Controversy in American History*. Lawrence, KS: University Press of Kansas.

John W. Johnson. 2005. *Griswold v. Connecticut: Birth Control and the Constitutional Right of Privacy*. Lawrence, KS: University Press of Kansas.
Michael J. Klarman. 2013. *From the Closet to the Altar: Courts, Backlash, and the Struggle for Same-Sex Marriage*. New York: Oxford University Press.
Mark Strasser. 2011. *Same-Sex Unions Across the United States*. Durham, NC: Carolina Academic Press.

"Since 1879 Connecticut has had on its books a law which forbids the use of contraceptives by anyone. I think this is an uncommonly silly law. As a practical matter, the law is obviously unenforceable, except in the oblique context of the present case. As a philosophical matter, I believe the use of contraceptives in the relationship of marriage should be left to personal and private choice, based upon each individual's moral, ethical, and religious beliefs. As a matter of social policy, I think professional counsel about methods of birth control should be available to all, so that each individual's choice can be meaningfully made. But we are not asked in this case to say whether we think this law is unwise, or even asinine. We are asked to hold that it violates the United States Constitution. And that I cannot do."

--- Justice Potter Stewart
Griswold v. Connecticut (1965)

"If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch."

--- Justice Thurgood Marshall
Stanley v. Georgia (1969)

"This right of privacy...is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."

--- Justice Harry Blackmun
Roe v. Wade (1973)

"To hold that the act of homosexual sodomy is somehow protected as a fundamental right would be to cast aside millennia of moral teaching."

--- Chief Justice Warren Burger
Bowers v. Hardwick (1986)

"The fundamental liberties protected by the Fourteenth Amendment's Due Process Clause extend to certain personal choices central to individual dignity and autonomy, including intimate choices defining personal identity and beliefs….The Court has long held the right to marry is protected by the Constitution. To be sure, these cases presumed a relationship involving opposite-sex partners, but other, more instructive precedents have expressed broader principles. In assessing whether the force and rationale of [these] cases apply to same-sex couples, the Court must respect the basic reasons why the right to marry has been long protected. This analysis compels the conclusion that same-sex couples may exercise the right to marry.

--- Justice Anthony Kennedy
Obergefell v. Hodges (2015)

Second Examination
March 26

8. ***Criminal Investigations***
(April 2 – 9)

One of the most interesting --- and complex --- set of legal questions that the Supreme Court has confronted involves the issue of how the state goes about gathering evidence to be used in criminal proceedings. The Fourth Amendment prohibits unreasonable searches and seizures, but what makes a search unreasonable? After all, the techniques by which officials have collected this evidence have changed drastically over time; innovations in medicine, telecommunications, transportation, and the like have made the work of law enforcement both easier and more difficult. What kinds of constitutional implications arise from these changes? The Fifth Amendment protects individuals from being compelled to incriminate themselves, but interrogations by police are an important means of gathering evidence. How can the state gather testimonial evidence while at the same time respecting the protection against self-incrimination?

Required reading:
Epstein, McGuire, and Walker, pp. 399-461

Suggested reading:
Akhil Reed Amar. 1998. *The Constitution and Criminal Procedure: First Principles*. New Haven, CT: Yale University Press.
Frank R. Baumgartner, Derek A. Epp and Kelsey Shoub. 2018. *Suspect Citizens: What 20 Million Traffic Stops Tell Us About Policing and Race*. New York: Cambridge University Press.
Craig M. Bradley. 1993. *The Failure of the Criminal Procedure Revolution.* Philadelphia: University of Pennsylvania Press.
Whitfield Diffie and Susan Landau. 1998. *Privacy on Line: The Politics of Wiretapping and Encryption.* Boston: MIT Press.
Barry Friedman. 2017. *Unwarranted: Policing Without Permission*. New York: Farrar, Straus, and Giroux.
John Gilliom. 1994. *Surveillance, Privacy, and the Law: Employee Drug Testing and the Politics of Social Contro*l. Ann Arbor: University of Michigan Press.
Joseph Grano. 1993. *Confessions, Truth, and the Law.* Ann Arbor: University of Michigan Press.
Leonard W. Levy. 1999. *Origins of the Fifth Amendment: The Right Against Self-Incrimination*. Lanham, MD: Ivan R. Dee.
Carolyn N. Long. 2006. *Mapp v. Ohio: Guarding Against Unreasonable Searches and Seizures*. Lawrence, KS: University Press of Kansas.

"This Court has recognized that coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition. A number of cases have demonstrated, if demonstration were needed, that the efficiency of the rack and the thumbscrew can be matched, given the proper subject, by more sophisticated modes

of 'persuasion.' A prolonged interrogation of an accused who is ignorant of his rights and who has been cut off from the moral support of friends and relatives is not infrequently an effective technique of terror….As important as it is that persons who have committed crimes be convicted, there are considerations which transcend the question of guilt or innocence. Thus, in cases involving involuntary confessions, this Court enforces the strongly felt attitude of our society that important human values are sacrificed where an agency of the government, in the course of securing a conviction, wrings a confession out of an accused against his will. This insistence upon putting the government to the task of proving guilt by means other than inquisition was engendered by historical abuses which are quite familiar."

--- Chief Justice Earl Warren
Blackburn v. Alabama (1960)

"It must always be remembered that what the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures."

--- Justice Potter Stewart
Elkins v. United States (1960)

"Whether the exclusionary sanction is appropriately imposed in a particular case...must be resolved by weighing the costs and benefits of preventing the use in the prosecution's case in chief of inherently trustworthy tangible evidence obtained in reliance on a search warrant issued by a detached and neutral magistrate that ultimately is found to be defective. The substantial social costs exacted by the exclusionary rule for the vindication of Fourth Amendment rights have long been a source of concern....An objectionable collateral consequence of this interference with the criminal justice system's truth-finding function is that some guilty defendants may go free or receive reduced sentences as a result of favorable plea bargains. Particularly when law enforcement officers have acted in objective good faith or their transgressions have been minor, the magnitude of the benefit conferred on such guilty defendants offends basic concepts of the criminal justice system."

--- Justice Byron R. White
U.S. v. Leon (1984)

"The term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police. This focus reflects the fact that the *Miranda* safeguards were designed to vest a suspect in custody with an added measure of protection against coercive police practices, without regard to objective proof of the underlying intent of the police. A practice that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation. But, since the police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they should have known were reasonably likely to elicit an incriminating response."

--- Justice Potter Stewart
Rhode Island v. Innis (1984)

9. ***Trials and Punishment***
(April 11 – 16)

The system of justice in the United States affords those who are charged with criminal wrongdoing with a number of guarantees. These procedural protections, which seek to ensure that the accused is not treated capriciously, have often required clarification from the justices. What kinds of rights does the accused have? When does an individual have the right to an attorney? What do the constitutional provisions that work to ensure a fair trial actually require in practice? What kinds of limits are there on the types of punishments that may be imposed on those who are convicted?

Required reading:
Epstein, McGuire, and Walker, pp. 463-474, 491-512

Suggested reading:
Dan T. Carter. 2007. *Scottsboro: A Tragedy of the American South*. Baton Rouge, LA: Louisiana State University Press.
David Garland. 2012. *Peculiar Institution: America's Death Penalty in an Age of Abolition*. Cambridge, MA: Belknap Press.
Brandon L. Garrett. 2011. *Convicting the Innocent: Where Criminal Prosecutions Go Wrong*. Cambridge, MA: Harvard University Press.
Lee Epstein and Joseph F. Kobylka. 1992. *The Supreme Court and Legal Change: Abortion and the Death Penalty*. Chapel Hill: University of North Carolina Press.
Anthony Lewis. 1964. *Gideon's Trumpet*. New York: Random House.

"The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect? If in any case, civil of criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense."

--- Justice George Sutherland
Powell v. Alabama (1932)

"Racial discrimination in selection of jurors harms not only the accused whose life or liberty they are summoned to try. Competence to serve as a juror ultimately depends on an assessment of individual qualifications and ability impartially to consider evidence presented at a trial. A person's race simply is unrelated to his fitness as a juror….The harm from discriminatory jury selection extends beyond that inflicted on the defendant and the

excluded juror to touch the entire community. Selection procedures that purposefully exclude black persons from juries undermine public confidence in the fairness of our system of justice. Discrimination within the judicial system is most pernicious because it is a stimulant to that race prejudice which is an impediment to securing to [black citizens] that equal justice which the law aims to secure to all others."

--- Justice Lewis Powell
Batson v. Kentucky (1986)

"In 1988, when Congress enacted legislation reinstating the federal death penalty, it expressly provided that a 'sentence of death shall not be carried out upon a person who is [intellectually disabled].' In 1989, Maryland enacted a similar prohibition. It was in that year that we decided *Penry*, and concluded that those two state enactments, even when added to the 14 States that have rejected capital punishment completely, do not provide sufficient evidence at present of a national consensus. Much has changed since then. Responding to the national attention received by the Bowden execution and our decision in *Penry*, state legislatures across the country began to address the issue. In 1990 Kentucky and Tennessee enacted statutes similar to those in Georgia and Maryland, as did New Mexico in 1991, and Arkansas, Colorado, Washington, Indiana, and Kansas in 1993 and 1994. In 1995, when New York reinstated its death penalty, it emulated the Federal Government by expressly exempting the [intellectually disabled]. Nebraska followed suit in 1998….[I]n 2000 and 2001 six more States --- South Dakota, Arizona, Connecticut, Florida, Missouri, and North Carolina --- joined the procession. The Texas Legislature unanimously adopted a similar bill, and bills have passed at least one house in other States, including Virginia and Nevada. It is not so much the number of these States that is significant, but the consistency of the direction of change. Given the well-known fact that anticrime legislation is far more popular than legislation providing protections for persons guilty of violent crime, the large number of States prohibiting [such] execution[s]…provides powerful evidence that today our society views [these] offenders as categorically less culpable than the average criminal. The evidence carries even greater force when it is noted that the legislatures that have addressed the issue have voted overwhelmingly in favor of the prohibition. Moreover, even in those States that allow the[se] execution[s]…the practice is uncommon….The practice, therefore, has become truly unusual, and it is fair to say that a national consensus has developed against it."

--- Justice John Paul Stevens
Atkins v. Virginia (2002)

10. ***Racial Equality***
(April 18 – 25)

The Fourteenth Amendment was designed to ensure that government not treat individuals in disproportionate ways on account of race. But what does equality actually require? Is it possible for the state to treat citizens differently along racial lines and still ensure that they are treated equally? Is it ever permissible for the state to make distinctions --- either explicitly or implicitly --- on the basis of race? Does it matter if those distinctions may be designed to correct for the effects of past discrimination?

Required reading:
Epstein, McGuire, and Walker, pp. 515-548, 557-582

Suggested reading:
Howard Ball. 2000. *The Bakke Case: Race, Education, and Affirmative Action*. Lawrence, KS: University Press of Kansas.
Roger Daniels. 2013. *The Japanese American Cases: The Rule of Law in Time of War*. Lawrence, KS: University Press of Kansas.
Donald W. Jackson. 1992. *Even the Children of Strangers: Equality Under the U.S. Constitution*. Lawrence: University Press of Kansas.
Michael J. Klarman. 2004. *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality*. New York: Oxford University Press.
Philip Klinkner and Rogers Smith. 2000. *The Unsteady March: The Rise and Decline of Racial Equality in America*. Chicago: University of Chicago Press.
Andrew Kull. 1994. *The Color-Blind Constitution*. Cambridge: Harvard University Press.
Michael Perry. 1999. *We the People: The Fourteenth Amendment and the Supreme Court*. New York: Oxford University Press.
Barbara Perry. 2007. *The Michigan Affirmative Action Cases*. Lawrence, KS: University Press of Kansas.

"The ordaining of laws in favor of one part of the nation, to the prejudice and oppression of another, is certainly the most erroneous and mistaken policy. An equal dispensation of protection, rights, privileges, and advantages, is what every part is entitled to, and ought to enjoy.... These measures never fail to create great and violent jealousies and animosities between the people favored and the people oppressed; whence a total separation of affections, interests, political obligations, and all manner of connections necessarily ensue, by which the whole state is weakened."

--- Benjamin Franklin,
Emblematical Representations (ca. 1774)

"The law regards man as man, and takes no account of his...color when his civil rights as guaranteed by the supreme law of the land are involved."

--- Justice John M. Harlan
Plessy v. Ferguson (1896)

"11. K. B. Clark, Effect of Prejudice and Discrimination on Personality Development (Midcentury White House Conference on Children and Youth, 1950); Witmer and Kotinsky, Personality in the Making (1952), c. VI; Deutscher and Chein, The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion, 26 J. Psychol. 259 (1948); Chein, What are the Psychological Effects of Segregation Under Conditions of Equal Facilities?, 3 Int. J. Opinion and Attitude Res. 229 (1949); Brameld, Educational Costs, in Discrimination and National Welfare (MacIver, ed., (1949), 44-48; Frazier, The Negro in the United States (1949), 674-681. And see generally Myrdal, An American Dilemma (1944)."

--- Footnote 11, *Brown v. Board of Education* (1954).

"Justice Stevens chides us for our 'supposed inability to differentiate between invidious and benign discrimination,' because it is in his view sufficient that 'people understand the difference between good intentions and bad.' But, the point of strict scrutiny is to differentiate between permissible and impermissible governmental use of race. And Justice Stevens himself has already explained in his dissent in *Fullilove* why 'good intentions' alone are not enough to sustain a supposedly 'benign' racial classification: '[E]ven though it is not the actual predicate for this legislation, a statute of this kind inevitably is perceived by many as resting on an assumption that those who are granted this special preference are less qualified in some respect that is identified purely by their race. Because that perception especially when fostered by the Congress of the United States - can only exacerbate rather than reduce racial prejudice, it will delay the time when race will become a truly irrelevant, or at least insignificant, factor. Unless Congress clearly articulates the need and basis for a racial classification, and also tailors the classification to its justification, the Court should not uphold this kind of statute.'...We hold today that all racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests."

--- Justice Sandra Day O'Connor
Adarand Constructors v. Pena (1995)

11. ***Gender Equality***

(April 30)

As American society has changed, many norms about gender have likewise been challenged and changed. Questions about the roles of the genders in both public and private life are longstanding matters of public debate. Of course, since the law reflects the ebb and flow of such social customs, public policies as they relate to gender have also produced legal disputes. How has the Supreme Court come to terms with such questions? It is important to remember that the Fourteenth Amendment, which guarantees equal protection of the laws, was undoubtedly motivated by racial considerations. Does that mean that the state may legitimately discriminate on the basis of gender?

Required reading:
Epstein, McGuire, and Walker, pp. 582-611

Suggested reading:

Judith A. Baer. 1991. *Women in American Law: The Struggle toward Equality from the New Deal to the Present*. New York: Holmes and Meier.

Susan Gluck Mezey. 1992. *In Pursuit of Equality: Women, Public Policy, and the Federal Courts.* New York: St. Martin's Press.

Suzanne Samuels. 1995. *Fetal Rights, Women's Rights: Gender Equality in the Workplace*. Madison: University of Wisconsin Press.

Philippa Strum. 2002. *Women in the Barracks: The VMI Case and Equal Rights*. Lawrence, KS: University Press of Kansas.

"Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and function of womanhood. The harmony...of interests and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband....The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother."

--- Justice Joseph P. Bradley
Bradwell v. Illinois (1873)

"The bias in Johnson Controls' policy is obvious. Fertile men, but not fertile women, are given a choice as to whether they wish to risk their reproductive health for a particular job. [T]he Civil Rights Act of 1964 prohibits sex-based classifications in terms and conditions of employment, in hiring and discharging decisions, and in other employment decisions that adversely affect an employee's status. Respondent's fetal-protection policy explicitly discriminates against women on the basis of their sex. The policy excludes women with childbearing capacity from lead-exposed jobs, and so creates a facial classification based on gender....Johnson Controls' policy classifies on the basis of gender and childbearing capacity, rather than fertility alone. Respondent does not seek to protect the unconceived children of all its employees. Despite evidence in the record about the debilitating effect of lead exposure on the male reproductive system, Johnson Controls is concerned only with the harms that may befall the unborn offspring of its female employees....Johnson Controls' policy is facially discriminatory, because it requires only a female employee to produce proof that she is not capable of reproducing."

--- Justice Harry A. Blackmun
Automobile Workers v. Johnson Controls, Inc. (1991)

"The Fourteenth Amendment's promise that no person shall be denied the equal protection of the laws must coexist with the practical necessity that most legislation classifies for one purpose or another, with resulting disadvantage to various groups or persons. We have attempted to reconcile the principle with the reality by stating that, if a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end. Amendment 2 fails, indeed defies, even this conventional inquiry. First, the amendment has the peculiar property of imposing a broad and undifferentiated disability on a single named group, an exceptional and...invalid form of legislation. Second, its sheer breadth is so discontinuous with the reasons offered for it that the amendment seems inexplicable by anything but animus toward the class it affects; it lacks a rational relationship to legitimate state interests."

--- Justice Anthony Kennedy
Romer v. Evans (1996)

"People knew that race discrimination was an odious thing, but there were many who thought that all the gender-based differentials in the law operated benignly in women's favor. So, my objective was to take the Court step by step to the realization, in Justice Brennan's

words, that the pedestal on which some thought women were standing all too often turned out to be a cage."

--- Justice Ruth Bader Ginsburg
Interview in 2014

Third Examination
Friday, May 3, 12:00pm

Frequently Asked Questions

Is class participation required?
I encourage participation and frequently call on people at random during class, but your contributions to class discussions have no bearing on your grade.

Do I have to read the suggested reading?
No.

Do I have to read the required reading before class?
No, the required readings will not be discussed in class. You will probably find it easier to read the required reading *after* class, since materials that are covered in class may make it easier for you to make sense of the readings.

What should I do if I miss class?
Attendance is not required, but the University emphasizes that it is your obligation. You are responsible for any material you may miss. If you have missed a class and have questions, please visit me during my office hours.

Will PowerPoint slides be available before the test?
Yes, a pdf copy of the slides will be posted on Sakai.

Is the final exam cumulative?
The final exam is *not* a comprehensive exam. It could more properly be termed a "third exam," since it will cover only new material on which you have not been previously tested. Therefore, you will have the same amount of time to complete this exam as you will have had on each of the first two exams.

How are final grades determined?
The numerical score (ranging from 0 to 100%) of each assignment is weighted, and those weighted scores are added together for an overall course score. Your overall course score is the basis for your final grade, which will be assigned according to the standard 10-point grading scale (A = 90-100, B = 80-89, C = 70-79, D = 60-69, F= <=59, with pluses and minuses). No letter grades are assigned

to any individual exam or paper.

Is there a curve?
Yes, but only if the grade distribution suggests that a curve is necessary. In some classes, there has been a considerable curve, while in others there has been none at all. I cannot say whether and to what degree there will be a curve until all assignments have been graded.

Is there any extra-credit that I can do to improve my grade?
No. Grades should be and are based on achievement, not effort.

What if my grades improve over the course of the semester? Will that improvement be reflected in my final grade?
No. The weights assigned to each assignment are specified at the outset of the course. Giving greater emphasis to work done later in the semester requires changing those weights for some students (i.e., those who have improved) but not others (i.e., those who have not improved). Such a system does not treat all students equally, which is something that a fair grading system requires.

Can I take the final exam on some day other than the required date?
The circumstances under which you may reschedule the final are described in detail in the undergraduate bulletin. In relevant passage, it states:

"A student who has three final examinations scheduled by the Registrar's Office within a 24-hour period may petition his or her dean for permission to have one of the scheduled examinations rescheduled. In the event that one of the scheduled examinations is a common final examination for a multiple-section course, that examination is the one to be rescheduled. Students who have secured an 'examination excuse' or an 'official permit,' and who transmit the document to the instructor or the instructor's departmental chair or dean, must be granted permission to take the exam at an alternate time, although students will need to arrange a mutually convenient time with the instructor. Except when the provost has provided an exception in writing, the exam will be taken at a time subsequent to the regularly scheduled exam, though no later than the end of the following semester."

Is the syllabus subject to change?
I will make every effort to stay on schedule throughout the semester, but this syllabus is not a contract. I therefore reserve the right to make changes to the syllabus. These changes will be announced as early as possible.

Of what University policies and services should I be aware?
(1) You must abide by the Honor Code.
(2) The University provides accommodations for those with special needs.
(3) Counseling services are available to address students' mental health concerns.
(4) You should report acts of discrimination, harassment, and sexual violence to the Title IX coordinator.